

APPEAL NO. 050822  
FILED MAY 26, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 15, 2005. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) date of injury pursuant to Section 408.007 is \_\_\_\_\_; that the claimant did not sustain a compensable repetitive trauma injury; that the claimant did not sustain a compensable injury on \_\_\_\_\_; and that the respondent/cross-appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer of the claimed injury pursuant to Section 409.001. The claimant appeals the hearing officer's determination that he did not sustain a compensable repetitive trauma injury. The carrier appeals the hearing officer's determinations on the issues of the date of injury and timely notice of injury.

DECISION

Affirmed.

The claimant's appeal was timely filed with the Texas Workers' Compensation Commission (Commission). The claimant asserts that the hearing officer erred in determining that he did not sustain a compensable repetitive trauma injury. Conflicting evidence was presented on the disputed issue of repetitive trauma injury. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. We conclude that the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The carrier's appeal was not timely filed with the Commission. Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) provides in pertinent part that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in the carrier's representative's box located at the Commission's main office as indicated by the Commission's date stamp. See *also* Rule

143.3(d)(2) regarding deemed receipt of the hearing officer's decision the first working day after the date the written communication was placed in a carrier's representative's box, unless the great weight of evidence indicates otherwise.

The carrier states that it received the hearing officer's decision on March 28, 2005. A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the carrier's representative's box on March 23, 2005. The first working day after March 23, 2005, was Thursday, March 24, 2005, which is the date the carrier is deemed to have received the hearing officer's decision, unless the great weight of the evidence indicates otherwise. Rules 102.5(d) and 143.3(d)(2). The 15th day after the deemed date of receipt of March 24, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Friday, April 15, 2005. The carrier's appeal is dated April 18, 2005, and was faxed and mailed to the Commission on that date. Because the carrier's appeal was faxed and mailed to the Commission after April 15, 2005, it was not timely filed with the Commission. The carrier's appeal would also be untimely filed if the 15-day time period were calculated from the date the carrier's representative provided a signed acknowledgment of receipt on March 24, 2005, which was the first working day after the hearing officer's decision was placed in the carrier's representative's box. Because the carrier's appeal was not timely filed with the Commission, the hearing officer's determinations regarding the date of injury and timely notice of injury have become final.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge